

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3248 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

LALJIBHAI OLIYABHAI VASAVA

Versus

APPELLATTE OFFICER

Appearance:

MR DN PANDYA for Petitioner

MR HV CHHATRAPATI for Respondents.

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 16/04/96

ORAL JUDGEMENT

By this petition under Articles 226 and 227 of the Constitution of India, the petitioner who is an illiterate Adivasi and earning his livelihood by doing agricultural labour work, has challenged the orders at Annexures 'A' and 'B' to the petition. By the order at

Annexure 'A' dated 31.12.1978, the Debt Settlement Officer, Rajpipla, Nandod, certified the petitioner to be a marginal farmer and reduced his debt from Rs.950/- to Rs.475/-, in exercise of his powers under sub-sec.(3) of section 8 of the Gujarat Rlral Debtors' Relief Act, 1976 and thereby reduced half of the debt of the petitioner.

Respondent No.3 preferred appeal against the said order at Annexure 'A' before the Appellate Officer and the District Registrar of Co-operative Societies, Bharuch, who by his order dated 31st July,1979 partly allowed the appeal No.20 of 1978-79. The Appellate Officer held that the appellant is not the real creditor, but the heir of late Musabhai Abdulbhai who was the creditor. The sale transaction dated 1.1.1974 was admittedly on a stamped paper of Rs.3/- and not registered. The sale transaction was, therefore, not legal and proper. The learned Appellate Officer, however, did not consider the finding of the Debt Settlement Officer in respect of the petitioner being marginal farmer and wrongly concluded that the debt of the petitioner was not liable to be reduced. He has not assigned any cogent and convincing reason about the refusal of the unregistered agreement of sale of the house of the petitioner recorded by the Debt Settlement Officer. The Debt Settlement Officer was justified in discarding the document as it was unregistered and being on a stamped paper of Rs.3/- only. The Appellate Officer has also committed error in holding that the transaction between the petitioner and late Musabhai Abdulbhai was not within the meaning of sec.2(c) of the Act. Section 2(c) of the Act defines "debt" as any liability (inclusive of interest) which is due from a debtor in cash or kind, whether secured or unsecured, or whether payable under a decree or order of any Civil Court or otherwise and subsisting on and legally recoverable on or after the appointed day. Section 2(d) defines "debtor" as a marginal farmer, a small farmer, rural labourer or a rural artisan, who on the appointed day is in debt. In facts of the case and in my opinion the learned Appellate Officer has not considered the definitions of "debt" and "debtor" appearing in section 2(c) and 2(d) of the Act, respectively, and contrary to the facts on record held that the petitioner was not the debtor. As observed hereinabove, he has not assigned any reason whatsoever while quashing the finding of the Debt Settlement Officer that the petitioner was a marginal farmer. In this view of the matter, the petition deserves to be allowed.

It may be stated that the respondent No.3, though served, has not appeared. In the above view of the

matter, the order passed by the appellate Officer cannot be sustained.

In the result, the petition is allowed. The impugned judgment and order dated 31.7.1979, at Annexure 'B', passed by the Appellate Officer in Appeal No.20 of 1978-79 is hereby quashed and set aside and the judgment and order of the Debt Settlement Officer dated 31.12.1978 at Annexure 'A' is restored. Rule is accordingly made absolute with no order as to costs.
